

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the authorized amount which can be paid by the Department of Legal Affairs for a forensic medical examination of a victim.

Safeguard Individual Liberty: The bill provides for payment of the physical examination of the victim of a sexual offense without requiring that the victim report the offense to law enforcement. The bill prohibits law enforcement from requiring a victim to take a polygraph examination as a condition precedent to an investigation of a sexual offense.

B. EFFECT OF PROPOSED CHANGES:

Victim's Assistance- Current Situation: Chapter 960 relates generally to the treatment of victims and witnesses in the criminal justice and juvenile justice systems. The chapter requires law enforcement to provide certain information and assistance to crime victims, witnesses, and their families. There are also provisions regarding victim compensation for expenses incurred as a result of a crime.

Polygraph Examinations of Victim: HB 989 amends s. 960.001, F.S. to add to the enumerated list of rights and services available to victims of crime. The bill provides that no law enforcement officer, prosecutor or other government official may require a victim of an alleged sexual battery¹ or other sexual offense to submit to a polygraph or other truth-telling device as a condition precedent to an investigation of the offense. Further, the bill states that the refusal to submit to such an examination shall not prevent the investigation, charging, or prosecution of the offense.

Victim Advocate: HB 989 amends s. 960.001, F.S. to require that a victim advocate from a certified rape crisis center be permitted to attend any forensic medical examination upon request by the victim, parent, guardian, or lawful representative.

HIV Testing Order: Currently, pursuant to s. 960.003, F.S. the victim or the victim's parent or legal guardian may request that the court order an HIV test of the accused if the accused has been charged with one of a list of specified offenses and the offense involved the transmission of bodily fluids.² The bill requires that the court order the person to undergo HIV testing within 48 hours of the court order.

Definition of "crime": Section 960.03(3)(c), F.S. includes within the definition of the term "crime", a criminal act that would have been compensable if it had occurred in this state and which occurred in a state that does not have an eligible crime victim compensation program. The bill removes from the definition of "crime" the requirement that the crime occur in another state, replacing the word "state" with the word "jurisdiction". This will permit compensation for a resident of this state when the crime occurs outside of the United States and the jurisdiction does not have a crime compensation program.

Payment for Forensic Physical Examination: Currently, the Crime Victims' Services Office of the Department of Legal Affairs pays for medical expenses connected with an initial forensic physical examination of a victim who reports a sexual battery or a lewd and lascivious offense to a law enforcement officer. The payment may not exceed \$250 and may not be made unless the law enforcement officer certifies that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense.

¹ s. 794.011, F.S.

² If the victim was a minor, a disabled adult or an elderly person, the HIV testing must be ordered for a list of specified offenses, regardless of whether the offense involves the transmission of bodily fluids. s. 960.003(2)(b), F.S.

HB 989 amends s. 960.28, F.S. to increase the amount of payment for the examination from \$250 to \$500. The bill removes language which requires the victim to report the offense to law enforcement in order for the initial forensic examination to be paid for by the department. The bill states that payment must be made regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement. The bill removes language providing that payment may not be made unless the law enforcement officer certifies that the examination is needed for an investigation.

Therefore, a victim who does not report a violation of sexual battery or a lewd and lascivious offense and who does not assist with the prosecution of the offender would be eligible to receive payment of \$500 on his or her behalf to cover the cost of the examination.

C. SECTION DIRECTORY:

Section 1. Amends s. 960.001, F.S. relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 2. Amends s. 960.003, F.S., relating to HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses.

Section 3. Amends s. 960.28, F.S., relating to payment for victims' initial forensic physical examinations.

Section 4. Provides for an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures: The Department of Legal Affairs anticipates that the provisions set forth in this bill would require twice the amount currently spent annually for forensic physical examinations to an estimated total of \$2,373,038. The source of these funds will be the Crimes Compensation Trust Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the staff of the Department of Legal Affairs, the department will not need increased trust fund authority to implement the provisions of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenue; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

This legislation, if enacted, will go a significant way towards providing a more compassionate investigative and forensic environment for victims of sexual battery and lewd and lascivious assaults. It places language into the existing state statute that addresses police procedures which most law enforcement agencies currently employ. It will also insert language that is a federal prerequisite for continued Congressional funding under the auspices of the Violence Against Women Act (VAWA) 2005. Florida currently receives approximately \$6 million annually from VAWA that supports various law enforcement and prosecution projects.

The council chair chose not to submit a statement regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

An amendment was adopted by the Homeland Security and Public Safety Committee relating to compensation for crimes committed against Florida residents outside of Florida. The change will permit compensation when the crime against a resident of this state occurs outside of the United States.

The Safety & Security Council adopted an amendment which clarified the provisions of the bill relating to HIV testing of the accused. The council reported the bill favorably as a council substitute.